

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

BRAD PELKOFER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 1:13-cv-1028-TWP-DKL
	)	
RAPISCAN SYSTEMS, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

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**DEFENDANT RAPISCAN SYSTEMS, INC.’S REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF ITS MOTION TO DISMISS PURSUANT TO  
FED. R. CIV. P. 12(B)(6) AND OPPOSITION TO PLAINTIFF’S MOTION  
FOR LEAVE TO AMEND**

Pursuant to Federal Rule of Evidence 201, Defendant Rapiscan Systems, Inc. requests that the Court take judicial notice of the following documents cited in Defendant’s Reply Memorandum in Support of Defendants’ Motion to Dismiss and Defendant’s Opposition to Plaintiff’s Motion for Leave to File Amended Complaint:

1. IRS Publication 1542, entitled *Per Diem rates* and available at <http://www.irs.gov/uac/Publication-1542,-Per-Diem-Rates>, attached hereto as Exhibit “A”.<sup>1</sup>

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<sup>1</sup> Defendant apologizes to the Court for the length of the documents submitted in connection with this Judicial Notice request. Due to the novel nature of Plaintiff’s “*per diem*” claim under IRS Publication 1542, Defendant is unsure of the exact basis for Plaintiff’s theory and the section(s) of 1542 on which Plaintiff relies.

2. IRS Publication 535, entitled *Business Expenses* and available at <http://www.irs.gov/pub/irs-pdf/p535.pdf>, attached hereto as Exhibit “B”.

Rule 201 of the Federal Rules of Evidence provides, in pertinent part, that “[a] court shall take judicial notice if requested by a party and supplied with the necessary information” of an adjudicative fact where the fact is “one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b) & (d).

“[I]n resolving a motion to dismiss, the district court is entitled to take judicial notice of matters in the public record. *Anderson v. Simon*, 217 F.3d 472, 474-75 (7th Cir. 2000); *G.E. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080-81 (7th Cir.1997) (collecting cases).” *Palay v. United States*, 349 F.3d 418, 425 n. 5 (7<sup>th</sup> Cir. 2003). Publically-available documents published by the Internal Revenue Service may be judicially noticed. *In re Draiman*, 450 B.R. 777, 802 n. 16 (N.D. Ill. Bk. Ct. 2011) (taking notice of 2009 IRS Instructions for Form 1041).

There can be no dispute that these IRS Publications, one of which is expressly relied on by Plaintiff, are subject to judicial notice. Defendant thus respectfully requests the court take notice of both.

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Respectfully submitted:

s/ Michelle M. La Mar

Michelle M. La Mar

(California SBN 163038, admitted *pro hac vice*)

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**CERTIFICATE OF SERVICE**

I hereby certify that an exact and true copy of the foregoing has been filed electronically on this 13<sup>th</sup> day of September, 2013. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and they may access this filing through the Court's system:

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s/ Michelle M. La Mar  
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